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7 **UNITED STATES DISTRICT COURT**
WESTERN DISTRICT OF WASHINGTON

8 METH LAB CLEANUP, LLC,
9 an Idaho limited liability company,

10 Plaintiff,

11 vs.

12 BIO CLEAN, INC.,
13 a Washington Corporation, and THERESA
14 BORST, an individual,

15 Defendants.

CASE NO.: 2:14-cv-01259

COMPLAINT FOR INJUNCTIVE
RELIEF, DAMAGES AND JURY
DEMAND

16 COMES NOW PLAINTIFF, METH LAB CLEANUP, LLC (“MLCC” or “Plaintiff”), by
17 and through its undersigned counsel, does hereby sue Defendants, BIO CLEAN, INC.
18 (“BioClean”) and THERESA BORST (“Borst”) (collectively “Defendants”) for willful
19 trademark infringement and unfair competition.
20

21 **PARTIES, JURISDICTION, AND VENUE**

22 1. This is a civil action pursuant to the Lanham Act, 15 U.S.C. §§ 1052 *et. seq.* and
23 related claims for injunctive relief, damages in excess of \$75,000.00 exclusive of interest,
24 attorney fees and costs.
25
26

1 2. MLCC is an Idaho limited liability corporation who conducts business across the
2 United States and Canada having its headquarters and principle place of business located at
3 2994 E. Sable Court, Athol, Idaho 83801-9794.

4 3. BioClean is a Washington corporation whose principal place of business is
5 located at 3316 Old Hartford Road, Unit A2, Lake Stevens, Washington 98258.

6 4. Borst is an individual engaged in commerce in the State of Washington who
7 resides in the Lake Stevens, Washington area.

8 5. This Court has *in personam* jurisdiction as to Defendants, as BioClean is
9 registered to conduct business in Washington and conducts substantial and not isolated business
10 activities within this state, this judicial district and this division. Borst resides in Washington
11 and conducts business through (and is the moving force of) BioClean.

12 6. Venue properly lies within this judicial district and division pursuant to 28 U.S.C.
13 §1391 and §1400.

14 7. This Court has jurisdiction over the subject matter of this action pursuant to 15
16 U.S.C. §1121, 28 U.S.C. §1331, §1338 and §1332 because there is diversity of citizenship
17 between the parties and the matter in controversy exceeds the sum of \$75,000.00, exclusive of
18 interest, attorney's fees and costs.

19
20 **FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

21 **Meth Lab Cleanup LLC and its Valuable Trademark Rights**

22 8. MLCC is a nationally recognized and licensed vendor that offers affordable and
23 effective testing and decontamination services for homes and facilities that were previously used
24 as illegal drug laboratories. As a pioneer in the field of clandestine drug lab decontamination,
25 MLCC has created and developed certain advanced clean up technologies to help rehabilitate
26

1 homes, apartments, condos and other dwellings that were unfortunately used to prepare and then
2 later sell illegal drugs.

3 9. MLCC offers these decontamination services nationwide through a series of
4 independent contractors – all of which have been trained and licensed by MLCC for purposes of
5 ensuring high quality and effective decontamination solutions to customers affected by these
6 illegal acts. By ensuring uniform training and then later effective service through its network of
7 trained technicians, MLCC helps ensure that a dwelling once contaminated by toxic chemicals
8 and illegal drugs will be safe and secure for later occupancy and domicile.

10 10. In order to ensure its network of decontamination specialists are adequately
11 trained with the most recent advances in the technology and procedures of clandestine drug lab
12 decontamination, MLCC has created a robust and comprehensive nationwide training procedure.
13 The training procedure includes MLCC's travel to various large metropolitan areas to conduct
14 detailed and comprehensive courses for purposes of certifying its cadre of trained technicians.
15 To provide these training courses, MLCC has created various training materials. In addition,
16 participants of these training procedures are also prompted to go to MLCC's website located at
17 www.MethLabCleanup.com (the "**METH LAB CLEANUP** Website") for various information,
18 including updated database of state laws, safety reminders and techniques, and other valuable
19 information.
20

21 11. As the purveyor of the information provided on the **METH LAB CLEANUP**
22 Website, as well as the owner of the rights in the training materials, MLCC has expended a
23 considerable level of time, effort, resources and money to create one of the country's only
24 nationally accredited, well regarded drug decontamination training programs. To protect the
25
26
repute and notoriety of this program – as well as the related decontamination services – MLCC

has sought the protections of both the Lanham and Copyright Acts to protect the name **METH LAB CLEANUP** as well as the underlying expression and authorship found in MLCC's training materials.

12. With regard to specific protection under Lanham Act, MLCC maintains six trademark registrations before the United States Patent and Trademark Office ("USPTO") regarding its corporate name "Meth Lab Cleanup LLC" as well as its related service mark **METH LAB CLEANUP** (collectively the "**METH LAB CLEANUP Marks**"). These six federal registrations include:

Mark and Registration No.	Class	Status	Identification of Services
METH LAB CLEANUP LLC Reg. No. 3,662,399	42	Registered (Aug. 4, 2009)	Evaluation and testing of illegal clandestine drug lab sites for the presence of hazardous and illegal materials; Evaluation and testing of real estate for the presence of hazardous material
METH LAB CLEANUP LLC Reg. No. 3,662,398	40	Registered (Aug. 4, 2009)	Consultation in the field of clandestine drug lab site decontamination; Decontamination of illegal clandestine drug lab sites
METH LAB CLEANUP LLC Reg. No. 3,662,396	41	Registered (Aug. 4, 2009)	Training services in the field of clandestine drug lab decontamination and cleanup.
METH LAB CLEANUP Reg. No. 4,288,271	41	Registered (Feb 12, 2013)	Training services in the field of clandestine drug lab decontamination and cleanup.
METH LAB CLEANUP Reg. No. 4,288,270	40	Registered (Feb 12, 2013)	Consultation in the field of clandestine drug lab site decontamination; Decontamination of illegal clandestine drug lab sites.
METH LAB CLEANUP Reg. No. 4,278,724	42	Registered (Jan 22, 2013)	Evaluation and testing of illegal clandestine drug lab sites for the presence of hazardous and illegal material, Evaluation and testing of real estate for the presence of hazardous materials.

True and correct copies of these six trademark registrations are attached as **Exhibit A** hereto.

13. In addition to these six registrations before the USPTO shown in **Exhibit A**, MLCC has developed certain enforceable common law rights to the mark **METH LAB CLEANUP**.

14. MLCC has engaged in considerable efforts to enforce and maintain exclusive rights to both its common law rights to the mark **METH LAB CLEANUP**, as well as with regard to the **METH LAB CLEANUP** Marks.

15. MLCC currently, and at all times material hereto, markets and sells its services under the **METH LAB CLEANUP** Marks to various governmental agencies and private customers throughout the United States in interstate commerce.

16. MLCC currently, and at all times material hereto, promotes and advertises its services at the **METH LAB CLEANUP** website, which includes the **METH LAB CLEANUP** marks. Plaintiff has expended extensive time, energy, and funds in promoting, marketing, and advertising its services under the **METH LAB CLEANUP** Marks.

17. The **METH LAB CLEANUP** Marks are inherently distinctive, or alternatively have become distinctive, and well known in the drug lab decontamination industry.

18. The **METH LAB CLEANUP** Marks connote MLCC's goodwill and reputation to relevant customers and in the industry.

MLCC and its Trademark Enforcement Initiatives

19. MLCC has successfully enforced its rights regarding its **METH LAB CLEANUP** marks, including the following seven successful ICANN arbitrations before the National Arbitration Forum, which resulted in transfer of certain domains featuring MLCC's marks:

Domain Name at Issue	Case No.	Adverse Party	Result	Transfer Date
Meth-LabCleanup.com	1301289	Laura Spaulding d/b/a Spaulding Decon LLC	Request Granted, Transfer of Domain name to MLCC	March 1, 2010
MethLabCleanup.Info	1376605	Michael Rowzee	Request Granted, Transfer of Domain name to MLCC	April 10, 2011
MethLabCleanupUtah.com; UtahMethLabCleanup.com	1412301	Utah Crime Scene Cleaners	Request Granted, Transfer of Domain name to MLCC	Nov. 29, 2011

TexasMethLabCleanup.com	1443888	Kirt Flippin d/b/a Texas Decon	Request Granted, Transfer of Domain name to MLCC	June 15, 2012
MethLabCleanup.co	1456469	Tony Branch	Request Granted, Transfer of Domain name to MLCC	Sept. 12, 2012
MethLabCleanup.us	1477963	Tony Branch	Request Granted, Transfer of Domain name to MLCC	Feb 12, 2013
MethLabCleanupOhio.com	1490567	Lee Surgener	Request Granted, Transfer of Domain name to MLCC	April 29, 2013

20. In addition to these seven successful ICANN proceedings, MLCC has obtained settlement resolutions with third-party remediation companies, which have likewise agreed not to use the **METH LAB CLEANUP** marks in headers, titles, meta-tags, and similar Internet /web based advertising. These settlements include, but are in no way limited to, the following:

Infringer Name	Address/Location	Date of Demand Letter by MLCC	Nature of Settlement Terms
X-Treme Cleaners	Prairieville, LA	July 17, 2013	Letter Agreement Dated July 22, 2013
American Integrated Services Inc.	Fairfield, CA	July 23, 2013	Letter Agreement Dated July 29, 2013
BioRecovery 911	Franklinton, LA	July 23, 2013	Signed settlement agreement dated July 25, 2013
SET Environmental	Wheeling, Il.	July 17, 2013	Letter Agreement, through counsel, dated July 23, 2013.

21. In addition, the United States District Court for the Middle District of Florida previously found in a case entitled *Meth Lab Cleanup LLC v. Spaulding Decon, et al.*, Case No. 8:10-CV-02550-JSM-TGW that both U.S. Trademark Reg. No. 3,662,398 and U.S. Trademark Reg. No. 3,662,399 “are valid and enforceable” and that “a reasonable trier of fact could find that the common law mark **METH LAB CLEANUP** used by [MLCC] has acquired distinctiveness and connotes a single source of training, testing, consulting and remediation services in the field

1 of clandestine drug laboratory decontamination.” A true and correct copy of this Order is
2 attached hereto as **Exhibit B**.

3 22. Based upon MLCC’s active enforcement of its valuable trademark rights through
4 settlement proceedings, ICANN arbitrations and through Federal court practice, the **METH**
5 **LAB CLEANUP** Marks represent some of the strongest and most valuable trademarks in this
6 industry.
7

8 MLCC’s Role in Washington State

9 23. MLCC is one of only two training programs recognized by the Washington
10 Department of Health with regard to professionals seeking to be certified in clandestine drug lab
11 decontamination.

12 24. Since June of 2009, MLCC has been a certified trainer in this field for the
13 Washington Department of Health. Attached as **Exhibit C** is a true and correct copy of MLCC’s
14 provider certificate with the State of Washington.
15

16 25. In addition, MLCC is one of only eight companies certified by the Washington
17 Department of Health to provide such services.

18 26. As such, MLCC represents not only one of the few companies which can provide
19 remediation services regarding former clandestine drug labs, but it is also one of the two groups
20 which the state fees is competent enough to provide underlying training.
21

22 BioClean and Theresa Borst

23 27. BioClean is a Washington state based provider of bio recovery services, including
24 the cleaning of crime scenes, assistance with helping hoarders, as well as addressing bed bug
25 problems. BioClean advertises these services on its Website www.BioCleanWa.com (the
26 “BioClean Website”).

1 28. Upon information and belief, Borst is the sole owner, principal and moving force
2 behind BioClean.

3 29. Upon information and belief, BioClean does not offer its services outside of the
4 state of Washington.

5 30. While not a primary focus of its service offerings, Bio Clean advertises locally
6 that it provides certain remediation services within Washington state regarding former
7 methamphetamine laboratories.

8
9 31. BioClean is one of the eight companies certified by the Washington Department
10 of Health to provide such services. BioClean sought to become certified by attending MLCC's
11 certification courses (as one of only two trainers recognized by the State of Washington).

12 32. In or about March 2009, four employees from BioClean became certified with the
13 Washington Department of Health through receiving training from MLCC. Copies of class
14 registrations for these four individuals with MLCC's March 2009 training class are attached as
15 **Exhibit D** hereto.

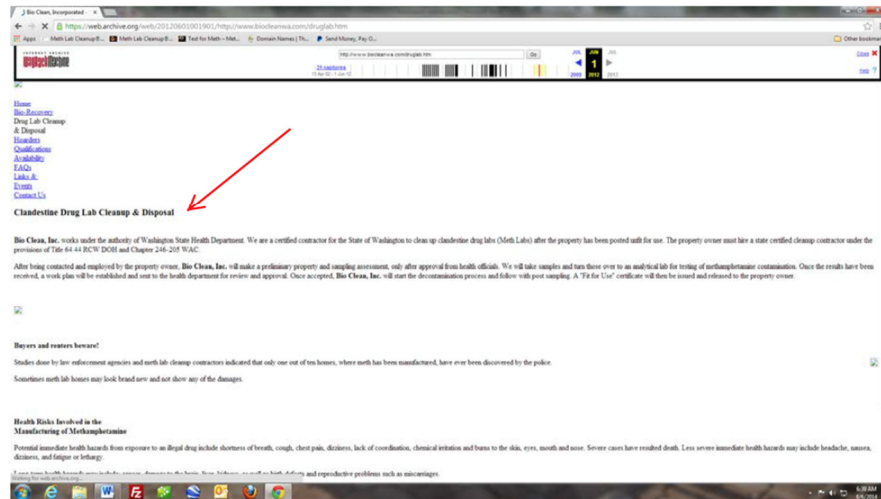
16
17 33. MLCC received three trademark registrations with the USPTO in August 2009 for
18 the marks **METH LAB CLEANUP LLC**:

- 19 • Trademark Registration No. 3,622,399
20 • Trademark Registration No. 3,662,398
21 • Trademark Registration No. 3,662,396

22 As such, BioClean was afforded appropriate notice regarding MLCC's rights to these marks in or
23 around this timeframe.

24 34. From August 2009 to June 2011, BioClean's on-line advertising did not make any
25 mention to the term "Meth Lab Cleanup" nor did it use any form of similar name in on-line
26

advertising. Instead, BioClean referred to its remediation services as “Clandestine Drug Lab Cleanup & Disposal” as shown by the following June 2011 archive of the BioClean Website:

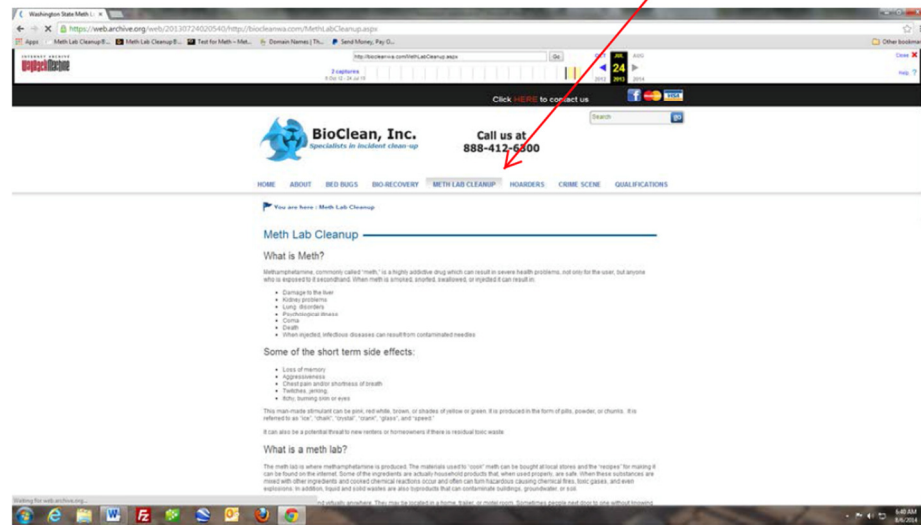


35. In or about February 12, 2013, MLCC received three additional trademark registrations from the USPTO for the mark **METH LAB CLEANUP**, which included the following registrations:

- Trademark Registration No. 4,288,271
- Trademark Registration No. 4,288,270
- Trademark Registration No. 4,278,724

As such, BioClean was afforded appropriate notice regarding MLCC’s rights to these three marks in or around this timeframe.

36. Soon after receipt of these trademark registrations by MLCC, BioClean changed its website advertising in or about June 2013 and began – for the very first time – to use the **METH LAB CLEANUP** Marks to advertise and promote Defendants’ clandestine laboratory remediation services. This is illustrated by a June 2013 dated archive of the BioClean Website:



37. This advertising and promotion by BioClean through use of the **METH LAB CLEANUP** Marks was without authorization or permission by MLCC.

38. MLCC was particularly concerned over BioClean's June 2013 changes to the BioClean Website (and related on-line advertising). Such use of the **METH LAB CLEANUP** Marks was particularly alarming based upon (a) MLCC's close geographic proximity with BioClean (Washington State v. western Idaho), (b) the fact that both MLCC and BioClean are only two of the eight licensed groups providing remediation services in the State of Washington, and (c) the fact that MLCC is a principal training group (one of only two) tasked by the State of Washington with training individuals seeking to conduct remediation services.

39. Based upon these concerns, MLCC prepared and served a written cease and desist letter on or about June 24, 2013 to stop BioClean's infringing on-line advertising (which at the time had only been going on for about one month). A true and correct copy of the June 24, 2013 cease and desist letter from MLCC is attached as **Exhibit E** hereto.

40. On or about August 2, 2013, MLCC received a response from attorney Christopher Pirnke from the Inslee Best firm to inform MLCC that it was "recently retained by

1 BioClean” to address MLCC’s allegations of trademark infringement and that the firm was
2 “evaluating [MLCC’s] claims and will respond in due course.” A true and correct copy of the
3 August 2, 2013 correspondence is attached at **Exhibit F** hereto. Ultimately no response was ever
4 ultimately provided on behalf of BioClean.

5 41. On or about February 20, 2014, a second written demand was sent by MLCC to
6 BioClean again addressing these actions of trademark infringement and unfair competition. A
7 true and correct copy of the second written demand is attached at **Exhibit G** hereto. This second
8 cease and desist letter by MLCC was likewise ignored by Defendants.
9

10 42. Despite multiple written demands to cease these willful and knowing actions of
11 infringement and unfair competition regarding the **METH LAB CLEANUP** Marks, Defendants
12 have continued to abuse the benefits accorded by MLCC’s training programs and certification
13 assistance to BioClean – and likewise BioClean has continued to used without authorization or
14 permission the **METH LAB CLEANUP** Marks. Such reckless use of these well recognized and
15 strong marks by BioClean has been done purposefully to promote Defendants’ own services in
16 bad faith and for an anti-competitive purpose.
17

18 43. Defendants’ intent and purpose in using the **METH LAB CLEANUP** Marks on
19 the BioClean website, is to allow customers searching Google for MLCC (by typing in the term
20 “Meth Lab Cleanup”) to instead be directed to the BioClean website.
21

22 44. Defendants’ use of the **METH LAB CLEANUP** Marks owned by MLCC has
23 caused, and is continuing to cause, actual confusion among consumers as to the source or
24 sponsorship of MLCC’s services.

25 45. MLCC has never authorized Defendants to use its **METH LAB CLEANUP**
26 Marks for any purpose.

47. If MLCC is not able to protect its **METH LAB CLEANUP** Marks from infringers and unauthorized use, it would be unable to effectively market those services to new or potential consumers.

48. MLCC has been, and continues to be, irreparably damaged by Defendants' unauthorized use of the **METH LAB CLEANUP** Marks.

COUNT I
FEDERAL UNFAIR COMPETITION – PASSING OFF
15 U.S.C. § 1125(a)

COUNT I
FEDERAL UNFAIR COMPETITION – PASSING OFF
15 U.S.C. § 1125(a)

49. MLCC re-alleges and incorporates by reference paragraphs one (1) through forty-eight (48) as if fully set forth herein.

50. Defendants have knowingly used the **METH LAB CLEANUP** Marks on BioClean website, in interstate commerce, and within multiple business channels in connection with the sale of services in the same industry as MLCC.

51. In addition, Defendants have used the **METH LAB CLEANUP** Marks as part of its metatags within the HTML code within its website for purposes of creating enhanced search engine optimization, such that when customers searching for MLCC type in “Meth Lab Cleanup” one of the search results will include the BioClean Website with the hope of diverting those customers to Defendants’ website advertisements. A copy of the metatag information for Defendants’ website is as follows:

`<meta id="MetaKeywords" name="KEYWORDS" content="bio
clean wa, bioclean, WA, crime scene cleanup, biohazard
cleanup, bio-hazard, biohazardous, bio- hazardous, blood,
body fluid, hoarding cleanup, hoarding clean-up, meth lab
cleanup, meth lab, clandestine, drug lab, hoarder, ABRA,`

52. Defendants' use of the **METH LAB CLEANUP** Marks is likely to cause, has caused, and will continue to cause, confusion among customers as to the origin, sponsorship or approval of Defendants' services.

53. Defendants' actions are in violation of 15 U.S.C. §1125(a) in that Defendants have used, and are using, in relation to commercial activities, a false designation or origin, or a false or misleading description which is likely to cause confusion, and to cause mistake, and to deceive, as to the affiliation, connection, or association of Defendants with MLCC as to the origin, sponsorship or approval of Defendants' commercial activities.

54. MLCC has suffered, and will continue to suffer, irreparable harm resulting from the acts of unfair competition by Defendants. MLCC will suffer additional irreparable harm unless Defendants are enjoined by the Court from continuing those acts, which constitute unfair competition.

55. MLCC has no adequate remedy at law.

56. Defendants' acts of unfair competition are willful and this is an exceptional case within the meaning of 15 U.S.C. §1117.

COUNT II
WASHINGTON STATE COMMON LAW UNFAIR COMPETITION
AND TRADEMARK CLAIMS

57. MLCC re-alleges and incorporates by reference paragraphs one (1) through fifty-six (56) as if fully set forth herein.

1 58. Continuously since on or about July 2003, MLCC has used the **METH LAB**
2 **CLEANUP** mark to distinguish its services by among other things, prominently displaying the
3 mark on its letterhead, bills, advertising, website pages and in periodicals distributed in interstate
4 commerce throughout the United States.

5 59. MLCC's **METH LAB CLEANUP** Marks are inherently distinctive, or have
6 acquired secondary meaning, to purchasers in the trade area in which the parties compete.
7

8 60. Defendants have adopted MLCC's **METH LAB CLEANUP** Marks to promote
9 their services via the Internet and various other business channels. Moreover, Defendants
10 created advertising via the Internet (as well as used metatags) for purposes of making the
11 appearance that Defendants are sponsored, affiliated or sanctioned by MLCC – which has led (or
12 may lead) to confusion in the relevant market.

13 61. The acts and conduct of Defendants, as alleged herein, constitute unfair
14 competition and trademark infringement pursuant to the common law of the State of
15 Washington, and Defendants have been engaged in acts of unfair competition as alleged above in
16 a willful, wanton and malicious manner.
17

18 62. By reason of the Defendants' acts alleged herein, MLCC has suffered, and will
19 continue to suffer, damages to its business, reputation, and goodwill, and is entitled to recover
20 damages for this injury, including the profits MLCC would have made but for Defendants' acts,
21 together with the ill-gotten gains of Defendants, and damages for its willfulness.
22

23 63. The conduct of the Defendants will continue, to the irreparable harm of MLCC,
24 unless Defendants are restrained and enjoined from further unlawful conduct.

25 64. MLCC's remedy at law is, therefore, inadequate to compensate it for the injuries
26 it will suffer in the future for the continued acts of infringement alleged herein.

COUNT III
INFRINGEMENT OF A FEDERALLY REGISTERED TRADEMARK
15 U.S.C. § 1114

65. MLCC re-alleges and incorporates by reference paragraphs one (1) through sixty-four (64) as if fully set forth herein.

66. MLCC's six registrations before the USPTO of the **METH LAB CLEANUP** Marks is conclusive evidence of the validity of the mark and of MLCC's exclusive ownership of and right to use its **METH LAB CLEANUP** marks.

67. Defendants' wrongful use of the registered **METH LAB CLEANUP** Marks in commerce in conjunction with the promotion of its services in the same trade industry as MLCC is likely to cause consumer confusion, mistake or deception as to source, sponsorship, affiliation, or authorization by MLCC, or alternatively, to destroy the origin-identifying function of MLCC's **METH LAB CLEANUP** Marks.

68. As a proximate result of Defendants' actions, MLCC has suffered, and will continue to suffer, damages to its business, reputation, and goodwill, and is entitled to recover damages for this injury.

69. The conduct of the Defendants will continue, to the irreparable harm of MLCC, unless Defendants are restrained and enjoined from further unlawful conduct.

70. MLCC's remedy at law is, therefore, inadequate to compensate it for the injuries it will suffer in the future for the continued acts of infringement alleged herein.

71. The foregoing acts of infringement by Defendants in appropriating the **METH LAB CLEANUP** Marks have been and continue to be deliberate, willful and wanton, making this an exceptional case within the meaning of 15 U.S.C §1117.

72. MLCC is entitled to a preliminary and permanent injunction against Defendants, as well as all other monetary remedies available under the Lanham Act, including, but not limited to, compensatory damages, treble damages, disgorgement of profits, costs and attorney's fees.

PRAYER FOR COSTS AND ATTORNEY FEES

MLCC requests award of reasonable costs and attorney fees pursuant to the Lanham Act and Washington state law.

REQUEST FOR JURY TRIAL

MLCC requests jury trial of all matters so triable as a matter of right.

PRAYER FOR RELIEF

WHEREFORE, for all of the foregoing reasons, Plaintiff, METH LAB CLEANUP, LLC, request this Honorable Court grant relief in the following manner:

a. Defendants and their agents, servants, employees, and those people in active concert or participation with them be preliminary and permanently enjoined from infringing on Plaintiff's **METH LAB CLEANUP** Marks.

b. Be awarded all other monetary remedies available under the Lanham Act and common law, including but not limited to, penalties and fines, compensatory damages, treble damages, disgorgement of profits, interest, costs and attorney's fees as legally permitted by each count respectively.

c. Any and all other relief that this Honorable Court deems just.

DATED this August 15, 2014.

ROHDE & VAN KAMPEN PLLC

s/ Nathan Paine

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